IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1049 OF 2002

Tata Infomedia Limited
(Erstwhile Tata Press Limited) ..Petitioner.

Vs.

Tata Press Employees' Union
& anr. ..Respondents.

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Mr.K.M.Naik i/b Mr.Sanjay Dhulapkar for the Petitioner.

Mr.A.D.Shetty with Ms.Rita Joshi for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

23rd March, 2005.

ORAL JUDGMENT :

1. This Petition arises out of an order passed by the Labour Court at Mumbai on 23rd October, 2001 in a reference to adjudication by which the enquiry in a disciplinary proceeding was held to be fair and proper, but, the finding was declared to be perverse.

2. On 19th January, 1991 charge sheets were issued to ten workmen. A disciplinary proceeding was held in respect of misconducts that were alleged to have been committed on 22nd August, 1990 and 14th September, 1990. In respect of the incident of 22nd August, 1990, the allegation was that the workmen had unauthorizedly left their work place; resorted to an illegal and unjustified stoppage of work and that they had participated in a gherao of the Managing Director and the General Manager in charge of production. The second incident is alleged to have taken place on 14th September, 1990 during the course of which the workmen are alleged to have instigated other workmen to proceed on an illegal strike. The workmen were accordingly charged with commission of acts of misconduct under clauses (a), (b), (d), (k), (l) and (r) of Standing Order 23 viz. (i) Wilful insubordination or disobedience of a lawful and reasonable order of a superior; (ii) Proceeding on an illegal strike or abetting, inciting, instigating an illegal strike or action in furtherance thereof; (iii) Theft, fraud and dishonesty in connection with the business of the employer or his property and (iv)

Drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment.

3. During the course of the enquiry, the management led the evidence of four witnesses - (i) J.U.Pethe who was the Manager in charge of Administration & Security; (ii) Martin Lobo, the Manager of the Prepress; (iii) C.M.Chalke, Assistant Manager, Binding & Works Superintendent and (iv) Maruti Tawade, who was a supervisor. M.L.Sawant one of the charge sheeted workmen deposed in defence. The Enquiry Officer by his report dated 10th May, 1993 held that the charge of willful insubordination and disobedience of lawful and reasonable orders of the superiors was proved. The Enquiry Officer held that the workmen had proceeded on an illegal strike and had abetted, incited and instigated others in furtherance thereof. The charge of riotous and disorderly behaviour on the premises of the establishment was held to be proved as well as the charge of the commission of an act subversive of discipline. However, the charge of theft, fraud and dishonesty was held not to be proved. An order of dismissal came to be passed.

4. A reference to adjudication was made under Section 10 of the Industrial Disputes Act, 1947. By consent of parties the Labour Court delivered a Part I award on 23rd October, 2001 in respect of four workmen to whom the present proceedings relate viz. D.G.Naik, M.L.Sawant, B.M. Save and V.H.Sandav. By its award the Labour Court has held that while the enquiry was fair and proper, the findings of the Enquiry Officer were perverse.

5. Counsel appearing on behalf of the Petitioner submits that the Labour Court has transgressed the limits on the exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947. The enquiry was held to be fair and proper and the charge of misconduct in the present case is urged to be of a serious nature involving a gherao, a wilful stoppage of the work and of the workmen having proceeded on an illegal strike. Before the Enquiry Officer the management had adduced evidence of four witnesses including eye witnesses who were personally present when the acts of misconduct took place. The finding of the Enquiry Officer, it was urged, was based on legally sustainable evidence.

Having regard, therefore, to the parameters of the jurisdiction under Section 11-A, it was submitted that the Labour Court was not justified in substituting its findings for those of the Enquiry Officer which were based on evidence. A disciplinary enquiry, it was submitted, is not bound by the strict rules of evidence and by the standard of proof required in a criminal trial. The findings of the Labour Court would show that the appreciation which has been carried out of the evidence does not fall within the limited parameters that are open to the reviewing Court under Section 11-A in disciplinary matters. In these circumstances, counsel submitted that the interference of this Court under Article 226 is warranted to correct a miscarriage of justice which has been occasioned by the transgression of the limitations on the jurisdiction of the Labour Court.

6. On the other hand, on behalf of the Respondent it was sought to be submitted that (i) There is no evidence of the existence of a gherao; (ii) The allegation in the charge-sheet was of the commission of an act of misconduct in the second

shift whereas, the Enquiry Officer in deviation thereof found that a misconduct had been committed in the first shift; (iii) The Managing Director and Production Manager who had been gheraoed had not been examined; (iv) One of the witnesses who had deposed in favour of the management was a member of a rival union who had indulged in a gherao in another incident; (v) There were inconsistencies between the statements of the witnesses and that in these circumstances it would appear that the management had indulged in an act of victimization by targeting the members of the Respondent union while condoning similar acts of misconduct committed by the members of a rival union. These submissions can now be considered.

7. The charge sheets dated 19th January, 1991 basically alluded to two acts of misconduct, the first of 22nd August, 1990 while the second was of 14th September, 1990. The charge sheets are similar and for convenience of exposition it would be instructive to refer to the allegations in the charge sheet issued to one of the four workmen concerned with this case, M.L.Sawant:

"It is reported that on 22nd August, 1990 when you resumed your duty in the 2nd shift at 3.30 PM you left your place of work unauthorizedly and without permission and resorted to illegal and unjustified stoppage of work alongwith other workmen. You also participated in the gherao of the Managing Director as well as General Manager (Production) from about 3.30 PM to 4.30 PM and this gherao was cleared with the help of local Police and State Reserve Police.

It is further reported that on 14th September, 1990 when you reported for work in 2nd Shift, you alongwith Mr.D.G.Naik and Mr.B.M.Save instigated other workmen to go on illegal and unjustified strike from about 8.30 P.M. till the end of shift. You also struck work and participated in the said strike."

8. Undoubtedly, in a disciplinary proceeding the management has to discharge the burden of establishing the misconduct. The management in the

present case led the evidence of four witnesses. J.U.Pethe who was the Manager in charge of Administration and Security stated that on 22nd August, 1990 he was informed by the Industrial Relations Manager that some members of the Shramik Utkarsha Sabha had gheraoed the General manager (Personnel). When he went to the cabin of this official, he found certain workmen were shouting slogans. The witness stated that he learnt that some employees who were members of the Respondent union had gheraoed the Managing Director H.S.Billimoria in his cabin on the third floor. He thereupon rushed to the third floor and found that the workers were shouting slogans in filthy and abusive language. The witness specifically identified inter alia the four workmen (M.L.Sawant, V.H.Sandav, D.G.Naik and B.M.Save) as being involved in the gherao of the Managing Director. The workers were insisting that the gherao would not be lifted until their claim for medical allowance was passed. The police were called in at 12.30 p.m. but the General Secretary of the union informed them that the gherao would not be lifted until the demands were met. The management thereupon addressed a letter to the police

requesting them to intervene and at about 3.45 p.m. the personnel of the SRP arrived at the establishment to restore order and to lift the gherao. J.U.Pethe, it may be noted, had prepared his own report of the incident which took place on 22nd August, 1990. The management, as already noted, adduced the evidence of three other witnesses including the Manager of the Prepress and a Supervisor who deposed to the incident which had taken place.

9. In the present case, apart from the evidence of the management's witnesses, it is instructive to advert to the testimony of one of the chargesheeted workmen, M.L.Sawant who stepped into the witness box. In the course of his examination-in-chief the workman stated that on 22nd August, 1990 he had reported for work at 8.00 a.m. in the first shift. In the course of his cross examination the witness stated that he had reported for work at 3.30 p.m. on 22nd August, 1990. He was thereupon asked as to whether that would mean that he had reported for work in the second shift. The witness, however, maintained that he had reported for work in the first shift. The witness was then asked as to why

on 22nd August, 1990 the Managing Director had been gheraoed and how many workmen had participated therein. Far from denying the existence of a gherao, the witness answered by stating that the workmen were demanding a special medical allowance and nearly all the workmen had proceeded to the Managing Director. The witness was then asked about the time at which the gherao ended on the third floor of the establishment and the workman stated that it was between 4.45 to 5.00 p.m. that he returned from the third floor and went home. The witness did not deny the fact that the police had entered upon the establishment on the third floor and he stated that he was not able to specify the conversation which had taken place between the General Secretary of the union and the police since a large number of workmen were present there. The workman, it is significant, specifically identified the three other chargesheeted workmen who were also present at the scene together with him. The witness stated that it was at 10.30 a.m. on 22nd August, 1990 that he and the other workmen had proceeded to the third floor to the office of the Managing Director and that it was true to say that between 10.30 a.m. and 4.45 p.m. all the workmen

were present on the third floor. The witness admitted squarely that his statement in the examination-in-chief to the effect that he had not left his place of work on 22nd August, 1990 was incorrect and he was in fact on the third floor (where the office of the Managing Director is situated). The witness stated that he had proceeded to the third floor since other members of the union had proceeded there and that he had not obtained the permission of his departmental head or supervisor while leaving his place of work. The witness was also cross examined with reference to the incident which took place on 14th September, 1990. He stated that on that day it was on the directions of a representative of the union who had informed the workers to stop work, that work had been ceased. The witness admitted that his statement in the course of his examination-in-chief to the effect that all the workmen were present at their place of work on 14th September, 1990 was incorrect.

10. On this state of the record there is, in my view, merit in the submission which has been urged on behalf of the Petitioner, that the finding which

was arrived at by the Enquiry Officer was borne out from the evidence consisting as it did not merely of the evidence of the witnesses for the management, but the clear admission of the charge sheeted workman who deposed in defence of the workmen. The Enquiry Officer had due regard to all the evidence on the record before him - the evidence of the four witnesses for the management as well as to the material admissions contained in the evidence of the charge sheeted workman. The charge sheeted workmen admitted that on 22nd August, 1990 there was in fact no meeting with the Managing Director. The Enquiry Officer held that there was sufficient evidence to show that there was a gherao; that the workmen had resorted to abusive and filthy slogans and that they had left their place of work without lawful permission. Similarly, the incident of 14th September, 1990 was held to have been established.

11. Several considerations have weighed with the Labour Court in coming to the conclusion that the findings that were arrived at in the course of the disciplinary enquiry were perverse and it is to the reasons of the Labour Court that it would now be

necessary to turn. The Labour Court held that : (i) The Managing Director and the Production Manager who had been gheraoed were not examined; (ii) Though the charge sheet referred to the presence of the workmen in the second shift, the Enquiry Officer had unnecessarily corrected the charge to hold that the gherao had begun even in the first shift; (iii) The evidence showed that apart from the gherao which forms the subject matter of the disciplinary proceedings in the present case, the Shramik Utkarsha Sabha which was another union had also gheraoed Mr.V.V.Kanuga, the General Manager (Personnel) ; (iv) The witnesses for the management as well as the Enquiry Officer had ignored the circumstance that the General Manager (Personnel) had also been gheraoed by the rival union; (v) One of the witnesses for the management was in fact a member of the rival union and he had been named as one of the workmen who had participated in the gherao of the General Manager (Personnel); (vi) The management had not taken any steps to have the strike declared illegal and (vii) There was no evidence to sustain the charge of drunken behaviour.

12. Before dealing with these reasons which have weighed with the Labour Court, it would be in the fitness of things to recapitulate the fundamental principles that govern the conduct of disciplinary enquiries :

(i) Disciplinary enquiries are not governed by the strict rules of evidence contained in the Evidence Act. The charge in a disciplinary enquiry has to be established on a preponderance of probabilities and not by proof beyond reasonable doubt that would govern a criminal trial;

(ii) Though the strict rules of evidence and proof do not govern a disciplinary proceeding the enquiry must nevertheless be consistent with the fundamental principles of fair play and natural justice. The Enquiry Officer has to consider the material objectively by eschewing considerations which are extraneous to a proceeding governed by fair play;

(iii) In each case where the finding that has been arrived at in a disciplinary proceeding is sought to be questioned, the essential question to be

asked is whether the finding of misconduct is based on some evidence or on no evidence at all. A finding which is based on no evidence is liable to be interfered with because it is then susceptible to the inference of arbitrariness and perversity. An approach which is perverse or arbitrary is the very negation of fair play and objectivity;

(iv) Once a finding in a disciplinary enquiry is based on some evidence, the sufficiency of evidence in proof of the finding lies beyond the scope of scrutiny of the reviewing Court. The finding must, however, be supported by legal evidence. The test of perversity is that a finding is not supported by legal evidence or where the finding is such as no reasonable body of persons would have arrived at on the basis of the material on the record;

(v) Wide as it is, the jurisdiction of the Labour Court under Section 11-A of the Industrial Disputes Act, 1947 is not unlimited. Section 11-A does not confer an arbitrary power on the Industrial Tribunal or the Labour Court. The jurisdiction is supervisory in nature, to be exercised where the finding in a disciplinary enquiry is based on no

evidence; where there has been a transgression of the principles of natural justice or where the finding is perverse in the sense that no reasonable body of persons could have arrived at such a finding.

13. Reference may be made in this connection to the decisions of the Supreme Court in **Central Bank of India v. Prakash Chand Jain** - (1969) II LLJ 377, **J.D.Jain v. Management of the State Bank of India** - (1982) I LLJ 54, **State of Haryana v. Rattan Singh** - (1982) I LLJ 46, **Rajinder Kumar v. Delhi Administration** - (1986) Lab I.C. 374, **Anil Kumar v. Presiding Officer** - (1986) 1 LLJ 101, **Food Corporation of India Workers Union v. Food Corporation of India** - (1996) II LLN 871 (SC).

14. In so far as the last proposition is concerned, it would be instructive to advert to two recent judgments of the Supreme Court. In Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy ((2005) 2 SCC 481), a disciplinary proceeding was convened. The workman had availed of a loan from the employer and though the title deeds were to be in the custody of the employer till the loan was

discharged, it was found that the workman had spirited away the title deeds during the period when the mortgage was to subsist and had attempted to sell the property. The Labour Court held that the finding of the disciplinary enquiry was lawful and that the confidence of the employer had been shaken. However, on the ground that no earlier misconduct had been spelt out and that the workman had "taken up the common cause of the employees", the punishment of dismissal was held to be harsh. This finding was affirmed both by a Single Judge and by a Division Bench of the High Court. The Division Bench held that the power of the Labour Court under Section 11-A was without limitation. The submission was that the Court had proceeded on the erroneous premise that the jurisdiction of the Labour Court was unlimited under Section 11-A. Dealing with this aspect of the matter, the Supreme Court held as follows :

> "In our opinion even the learned Single Judge and the Division Bench erroneously held that the Labour Court had unlimited jurisdiction under Section 11-A of the Act. It is because of the above erroneous legal foundation as to

> the vastness of power vested with the Labour Court that the High Court accepted the interference by the Labour Court in the award of punishment. Thus, the Labour Court as well as the high Court fell in error in granting the relief to the respondent which is challenged in this petition."

The Supreme Court relied upon the earlier judgment in Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Assn. ((1987) 4 SCC 681) to hold that the power under Section 11-A does not signify the conferment of an arbitrary discretion, but is a power which has to be exercised judicially.

15. The second recent judgment is the judgment in Bharat Forge Co. Ltd.v. Uttam Manohar Nakate ((2005) 2 SCC 489). That was a case where a workman was found asleep while working in the first shift. Upon a disciplinary enquiry he was dismissed from service. The past record showed the imposition of some minor punishments on three occasions. The Labour Court held that the findings were not perverse but came to the view that the

punishment was harsh and disproportionate. Reinstatement with half the backwages was directed. The Industrial Court allowed a revision application filed by the employer. A Petition under article 226 filed by the workman was dismissed by the Single Judge of the High Court. However, a Letters Patent Appeal was allowed by the Division Bench against which the employer went in appeal to the Supreme Court. The complaint in that case was inter alia under Item 1(a), (b) and (g) of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Adverting to the earlier decision of the Supreme Court in Bharat Iron Works v. Bhagubhai Balubhai Patel ((1976) 1 SCC 518) the Supreme Court held that a proved misconduct is the very antithesis of victimization. Once a gross misconduct is established on legal evidence either in a fairly conducted domestic enquiry or before the Tribunal on merits, the plea of victimization will not carry the case of the employee any further. The Supreme Court held that it is trite law that the Labour Court or the Industrial Tribunal must act within the four corners of the governing legislation :

> "The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other."

The law on the subject was elucidated in Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain - (2005) I CLR 821, where the Supreme Court held thus :

> "The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and

> the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.
>
> To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference."

16. These binding principles must guide the outcome of the present proceedings. In the present case, the charge of misconduct was found to have been established on a consideration of the entire evidence. There is evidence not merely of the witnesses for the management but there are admissions contained in the evidence of the charge sheeted workman in the course of his cross examination. There was a sustainable finding of misconduct based on evidence on the record. This was clearly not a case of perversity. The Enquiry Officer had neither acted in breach of the principles of natural justice nor could the finding

be regarded as one which no reasonable body of persons could have entered in the course of an adjudication into facts before the disciplinary enquiry. Each of the considerations that has weighed with the Labour Court is alien to the parameters of its jurisdiction under Section 11-A. The Labour Court held that the Managing Director and the Production Manager who were gheraoed were not examined. This, in my view, cannot certainly be regarded as fatal to the outcome of the disciplinary proceeding. The question before the Labour Court was whether there was evidence, some evidence at that, to sustain the charge of misconduct. Once that question is answered in the affirmative as in the present case it has to be, the sufficiency of that evidence was clearly not a matter for the Labour Court to determine. A considerable degree of emphasis had been led by the Labour Court on the circumstance that while the charge sheet alleged that the act of misconduct had taken place between 3.30 and 4.30 p.m. when the charge sheeted workmen were in the second shift, the Enquiry Officer had erred in correcting the allegations contained in the charge sheet. A perusal of the Enquiry Report will reveal that the

aforesaid charge which has been levelled against the Enquiry Officer is neither just nor correct. The charge sheet alleged that the workmen were on duty on the second shift on the date of the incident. The workman in the course of his examination in chief, however, stated that he had reported for work at 8.00 a.m. on 22nd August, 1990 and it was his evidence that from 10.30 a.m. until 4.45 p.m. he had accompanied almost all the workmen in the establishment to the place of gherao. The evidence showed that, it was only when the State Reserve Police intervened that the gathering of the workmen who had resorted to a gherao was dispersed. Counsel appearing on behalf of the management submitted that the charge sheet contains a typographical error in adverting to the second shift. However, for the purpose of the proceeding, the Court will proceed on the basis that the charge was of misconduct during the second shift. Even so, there is merit in the submission of the management that the effect of the charge sheet as it stands is to confine the allegations of misconduct to what occurred between 3.30 and 4.30 p.m. on 22nd August, 1990 and that there is evidence on the record to demonstrate that during

this period the charge sheeted workmen had been unauthorizedly absent from their place of work and had participated in a gherao of the Managing Director. The entire approach of the Labour Court is with respect thus flawed. The Labour Court has found fault with the findings of the Enquiry Officer on the ground that the witnesses for the management had ignored the circumstance that the General Manager (Personnel) V.V. Kanuga had also been gheraoed by the rival union. This circumstance which has weighed with the Labour Court is extraneous to the entire proceeding because the charge of misconduct against the workmen related to a gherao of the Managing Director and the Production Manager with the resultant stoppage of work. Once the charge of misconduct was established, the allegation of victimization, as the Supreme Court has held in Bharat Forge Co. (supra) would lose its significance particularly, in the absence of any cogent evidence in regard to victimization in the present case. Similarly, the Labour Court was entirely in error in holding that the management had not moved the Labour Court for a declaration in regard to the illegality of the strike. From the

evidence, including the admissions of the charge sheeted workman it was evident that there was a concerted stoppage of work upon the instructions of a representative of the union and that the workmen had stopped work both on 22nd August, 1990 and 14th September, 1990. There was no occasion, therefore, for the Labour Court to hold that a proceeding ought to have been initiated for getting the strike declared as illegal before the disciplinary proceedings could be sustained.

17. Considering the matter, therefore, from any perspective, I am of the view that the entire approach of the Labour Court is flawed and the interference of this Court under Article 226 of the Constitution is warranted. This Court, it must be emphasised, has not adverted to the evidence on the record to reappreciate the findings of the Labour Court or to substitute its own conclusions for those of the Labour Court. The Court under Article 226, would not do so. This is a case where the finding of misconduct that was arrived at in the disciplinary proceeding was sustainable with reference to the evidence on the record. The Labour Court has transgressed the limits on its own

jurisdiction in interfering with the findings in the disciplinary enquiry which were based on evidence. The Labour Court has ignored the material evidence. In appreciating the evidence on the record, the Labour Court has applied a standard which is not consistent with the standard of proof of a preponderance of probabilities that must govern a disciplinary proceeding. In relying upon minor inconsistencies the Labour Court has lost sight of the fundamental nature of its jurisdiction which was to determine as to whether there was material on the record to sustain the charge of misconduct. This Petition accordingly has to be allowed and the order of the Labour Court has to be quashed and set aside.

18. In the circumstances, the Petition is allowed. The impugned order of the Labour Court dated 23rd October, 2001 is quashed and set aside. The Labour Court shall now proceed to dispose of the reference on the remaining issue viz. the question as to whether the punishment which has been imposed is disproportionate to the charge of misconduct. In the circumstances of the case, there shall be no costs.